



City of High Point, NC

Lead Based Paint Hazard Control Grants

**Office of Audit, Region 4
Atlanta, GA**

**Audit Report Number: 2015-AT-1005
July 9, 2015**



To: Eric Hornbuckle, Director of Programs Division, Office of Healthy Homes and Lead Hazard Control, L

//signed//

From: Nikita N. Irons, Regional Inspector General for Audit, 4AGA

Subject: The City of High Point Did Not Properly Administer Its Lead-Based Paint Hazard Control Grants in Compliance With Federal Requirements

Attached is the U.S. Department of Housing and Urban Development (HUD), Office of Inspector General's (OIG) final results of our review of the City of High Point's lead-based paint hazard control grants.

HUD Handbook 2000.06, REV-4, sets specific timeframes for management decisions on recommended corrective actions. For each recommendation without a management decision, please respond and provide status reports in accordance with the HUD Handbook. Please furnish us copies of any correspondence or directives issued because of the audit.

The Inspector General Act, Title 5 United States Code, section 8M, requires that OIG post its publicly available reports on the OIG Web site. Accordingly, this report will be posted at <http://www.hudoig.gov>.

If you have any questions or comments about this report, please do not hesitate to call me at 404-331-3369.



Audit Report Number: 2015-AT-1005

Date: July 9, 2015

The City of High Point Did Not Properly Administer Its Lead-Based Paint Hazard Control Grants in Compliance With Federal Requirements

Highlights

What We Audited and Why

We audited the City of High Point's lead-based paint procurement and eligibility operations. This audit was a result of a referral from the U.S. Department of Housing and Urban Development's (HUD) Office of Healthy Homes and Lead Hazard Control. Our audit objective was to determine whether the City administered its lead-based paint hazard control grants in accordance with HUD's regulations and grant requirements for procurement of contracted services and expense eligibility.

What We Found

The City did not properly manage its procurement activities in accordance with HUD's requirements. Specifically, it continued using an expired contract to pay for environmental services from November 1, 2009, to July 15, 2013. Also, it did not consistently select the lowest bidder, retain required documentation, and perform cost analyses on change orders. As a result of the City's noncompliance, HUD funds were used to pay more than \$1 million for ineligible and unsupported procurement costs.

The City improperly used its grant funds for expenses that did not contain lead-based paint and for ineligible lead-based paint expenses. As a result, HUD funds were used to pay more than \$9,000 for ineligible costs, which the City was not able to use for other projects.

What We Recommend

We recommend that the Director of the Office of Healthy Homes and Lead Hazard Control require the City to (1) reimburse \$207,097 in ineligible costs from non-Federal funds, (2) support or reimburse \$874,241 in unsupported costs from non-Federal funds, and (3) implement internal controls to ensure that regulations and procedures are followed. We also recommend that the Director continue the zero threshold process by reviewing the eligibility of the projects for approval under the 2011 grant until the grant is completed.

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Background and Objective

The City of High Point, Community Development and Housing Department, administers the City's Lead Safe High Point program. The program is federally funded by the U.S. Department of the Housing and Urban Development (HUD). The purpose of the program is to identify and control lead-based paint hazards in eligible privately owned rental or owner-occupied housing.

HUD awarded the City lead-based paint hazard control grants of \$5.5 million for grant years 2008 and 2011. As of March 17, 2015, the City had used its entire 2008 grant of more than \$2.9 million and more than \$755,000 of its more than \$2.4 million 2011 grant.

HUD's Office of Healthy Homes and Lead Hazard Control conducted a review of the City in May 2013 and identified that the City used grant funds for nonlead components, did not consistently follow procurement policy and regulations, and had inadequate record keeping. HUD reviewed the City's 2008 and 2011 grant and questioned \$107,407 of the \$588,206 (18 percent) reviewed. Since the review, HUD had placed the City on a zero threshold for approval of projects under the 2011 grant but had not reviewed later spending for eligibility.

The HUD Office of Healthy Homes and Lead Hazard Control is responsible for overseeing the City's program.

Our audit objective was to determine whether the City administered its lead-based paint hazard control grants in accordance with HUD's regulations and grant requirements for the procurement of contracted services and expense eligibility.

Results of Audit

Finding 1: The City Did Not Comply With Procurement Requirements

The City did not properly manage its procurement activities in accordance with HUD's requirements. Specifically, it continued using an expired contract to pay for environmental services from November 1, 2009, to July 15, 2013. Also, it did not consistently select the lowest bidder, retain required documentation, and perform cost analyses on change orders. These conditions occurred because the City lacked internal controls over its lead-based paint hazard control grant and did not ensure that its staff followed HUD's procurement regulations during personnel changes. As a result of the City's noncompliance, HUD funds were used to pay more than \$1 million for ineligible and unsupported procurement costs.

Expired Contract

The City entered into an environmental contract in April 2009 for services rendered from April 1 through October 31, 2009. This contract had expired and was not renewed; therefore, as of November 1, 2009, the contract was no longer valid. However, the City continued to pay the contractor under the expired contract through July 31, 2013, which resulted in more than \$197,000¹ (see appendix C) in unallowable costs. The City's affordable housing manager stated that the contract was expired when he started working for the City.

Failure To Follow Procurement Requirements

We reviewed a statistical sample of 14 of 287 lead-based paint hazard control grant projects from the City's 2008 and 2011 lead-based paint hazard control grants. The City did not adequately procure the contracts for the 14 projects reviewed totaling more than \$877,000 for procurement activities. In addition, the City did not follow its 2008 and 2011 grant work plans and 24 CFR (Code of Federal Regulations) 85.36.

- The City did not select the lowest bidder. The City would determine the cost estimate amount and the 15 percent margin above and below this amount. It would open the bids after it determined the range. For any bids outside the 15 percent range, the City would consider the contractor to be nonresponsive. As a result, it did not select the lowest bidder for 5 of the 14 (36 percent) project bids (see appendix C). Regulations at 24 CFR 85.36(d)(2)(ii) state that the lowest bidder must be selected for sealed bids. The HUD Director of Community Planning and Development was aware that the City used a 15 percent margin to disallow offers outside the margin; however, this practice did not comply with

¹ This amount includes \$151,699 from the 2008 grant year and \$45,740 from the 2011 grant year.

HUD regulations. The City's community development director stated that this practice was used when he worked for another North Carolina city and it was the practice when he started at the City of High Point.

- The City did not retain all procurement documentation, such as signed contracts, notices to proceed, requests for bids and documents, and cost estimates for change orders as required by the City's work plans. In addition, 24 CFR 85.36(b)(9) states that grantees must provide sufficient procurement history. Also, 24 CFR 85.36(f)(1) states that the grantee must perform a cost estimate for every procurement action. All of the 14 projects reviewed lacked at least 2 types of procurement documentation. Upon request, the City could not provide the required documentation for the 14 projects totaling more than \$877,000² (see appendix C).
- The City did not prepare cost analyses on change orders for 6 of the 14 (43 percent) projects totaling more than \$784,000 as required by 24 CFR 85.36(f)³ (see appendix C). As a result, it did not support the reasonableness of the costs. The affordable housing manager stated that City staff performed cost analyses informally but had not documented them.

Lack of Internal Controls

Although the City had a HUD-approved work plan, the director of the Community Development and Housing Department did not ensure that City staff followed the requirements. The director stated that during times of staff turnover and workload increases, staff focused on completing the work and did not follow the requirements. Between December 2008 and August 2014, the City had two different affordable housing managers, and the position was vacant from November 17, 2011, to August 13, 2012.

The City's affordable housing manager stated that as a result of HUD's May 2013 review, the City had developed new standard operating procedures for the lead grant program, which addressed the 15 percent margin issues identified. However, as of March 12, 2015, the newly developed standard operating procedures had not been dated, signed, or implemented. The director stated he verbally approved the procedures. The affordable housing manager stated that some of the staff had been involved in writing the procedures and thought that would be sufficient to implement the new procedures. The new standard operating procedures no longer allowed the 15 percent margin as the reason for removing a bid. They also required that the project manager review the bid with each contractor as if the bid were outside the 15 percent margin to confirm whether the contractor could perform the work for the price of the bid. Although City staff could access the standard operating procedures on the City's shared drive, the City had not trained its staff on the new procedures.

² This amount is comprised of \$460,397 from the 2008 grant and \$416,914 from the 2011 grant.

³ Regulations at 24 CFR 85.36(f) require that grantees and subgrantees must perform a cost or price analysis in connection with every procurement action, including contract modifications.

Conclusion

The deficiencies discussed above occurred because the City failed to comply with HUD's procurement regulations or its own policies to ensure that HUD funds were used for eligible services and procurements were adequately supported.

Recommendations

We recommend that the Director of the Office of Healthy Homes and Lead Hazard Control require the City to

- 1A. Reimburse the U.S. Treasury from non-Federal funds \$151,699 from the 2008 grant for ineligible procurement activities using the expired environmental contract.
- 1B. Repay the program \$45,740 from non-Federal funds from the 2011 grant for ineligible procurement activities using the expired environmental contract.
- 1C. Provide adequate support or reimburse the U.S. Treasury from non-Federal funds for procurement activities from the 2008 grant totaling \$457,327.⁴
- 1D. Provide adequate support or repay the program from non-Federal funds for procurement activities from the 2011 grant totaling \$416,914.
- 1E. Develop and implement internal controls to ensure that it complies with HUD procurement regulations and its policies and procedures so that only eligible costs are paid using the grant funds and the costs are properly supported.
- 1F. Ensure that City staff is trained on the policies and procedures for HUD procurement regulations to ensure that the staff no longer uses the 15 percent cost estimate margin.

⁴ The actual amount unsupported was \$460,397. To avoid double counting, the amount was reduced by \$3,070, which is accounted for in the eligibility section.

Finding 2: The City Used HUD Funds for Ineligible Costs

The City improperly used its grant funds for expenses that did not contain lead-based paint and for ineligible lead-based paint expenses. These conditions occurred because City staff did not understand HUD’s requirements or the City’s work plan. As a result, HUD funds were used to pay more than \$9,000 for ineligible costs, which the City was not able to use for other projects.

Ineligible Use of Funds

The City did not properly administer its 2008 grant for work items and expenses for 6 of the 14 (43 percent) projects. The City paid more than \$8,000 in lead-based paint expenditures for six projects that did not comply with the 2008 notice of funding availability⁵ (see table). The City’s project managers stated that during HUD training, they received conflicting information regarding what was considered an eligible expense. However, they were unable to confirm in which training they received the conflicting information.

Ineligible use of funds

Project name	Items and issue	Amount
519 North Centennial	Patch ceiling sheetrock - The item was not listed as a lead paint hazard.	\$ 400
201 Edgeworth	Interior door -The item did not test positive for lead.	\$ 700
415 Welch	Remediate siding and trim - The items were not tested for lead.	\$3,552
610 Clover Drive	Rear door and bathroom exhaust fan - The items were not tested for lead.	\$850 \$250
1005 Barbee	Doors - The doors were not tested for lead.	\$2,275
1912 Wickham	Miniblinds - The item was not tested for lead.	\$70
Total		\$8,097

The City also spent \$1,063 for moving expenses that would not be needed according to the City’s work plan because the contractor would move the furniture to the center of the room and cover it while completing the work. However, the City paid the moving expenses for one unit.

⁵ Notice of Funding Availability 2008 (III C 2a (4))

City staff stated that it was not aware of the work plans.⁶ In addition, the City miscoded the cost of a hot water heater for \$498, using lead-based paint funds instead of a community planning and development grant.

Conclusion

The deficiencies discussed above occurred because the City failed to comply with HUD's regulations and its own policies to ensure that HUD funds were used for eligible services. Specifically the City did not implement internal controls over its lead-based paint grant because its staff and management did not understand HUD's requirements and the City's work plan. Therefore, HUD's continuous oversight of the remaining 2011 project grant funds would ensure the required procedures are implemented.

Recommendations

We recommend that the Director of the Office of Healthy Homes and Lead Hazard Control require the City to

- 2A. Reimburse the U.S. Treasury \$9,658 from non-Federal funds for the 2008 grant payments made for ineligible expenses.
- 2B. Develop and implement internal controls to ensure that it complies with HUD regulations and its work plans so that only eligible costs are paid using grant funds.

We also recommend that the Director of the Office of Healthy Homes and Lead Hazard Control

- 2C. Continue the zero threshold process by reviewing the eligibility of the projects for approval under the 2011 grant until the grant is completed.

⁶ The 2008 work plan refers to the grantee's plan for implementing the specific, reasonable, time-phase objectives for each major program activity in the grant.

Scope and Methodology

We performed our audit from September 2014 and May 2015 at the City's office located in High Point, NC, and the HUD Office of Inspector General's (OIG) Greensboro and Atlanta regional offices.

To accomplish our objective, we

- Interviewed City staff to obtain an understanding of the controls significant to the audit objective and assist in our review of City records.
- Interviewed HUD staff to obtain background information on the grantee.
- Reviewed applicable criteria, including Public Law 102-550, Residential Lead-Based Paint Hazard Reduction Act of 1992; 24 CFR Part 35, Lead Base Paint in Residential Structures; 24 CFR 85.36, Federal Procurement Regulations; 2008 Lead-Based Paint Notice of Funding Availability; 2011 Lead-Based Paint Grant Notice of Funding Availability; 2008 City grant agreement, and 2011 City lead-based paint hazard control grant.
- Reviewed 14 lead-based paint hazard control project files for compliance with procurement and eligibility requirements.

The City received \$2,808,897 and selected 335 projects to complete using the lead-based paint hazard control grant funds during our audit period. Since HUD performed a review of the City's grants, we removed the 45 projects HUD reviewed from the 335 audit universe. We also removed an additional three projects; two had zero dollars spent and one had two entries. Our remaining universe was 287 projects for the City's 2008 and 2011 grants. From the universe of 287, we develop a statistical sample of 75. We reviewed a statistical sample of 14 projects totaling \$206,455⁷, charged to the 2008 and 2011 lead-based paint grants, from 287 projects completed totaling \$2,808,496 for the audit period December 1, 2008, through August 31, 2014, which was expanded as determined necessary. Of the 14 projects, 12 were from the 2008 grant, and 2 were from the 2011 grant. Since we reviewed only 14 the 75 sampled projects, the results of the audit apply only to items selected for review and cannot be projected to the universe or population. The statistical sample amount is unit based. From the sample of 14 projects, 4 projects were for the same multi-family complex, Oakwood Apartments, and are presented in Appendix C as one project. Appendix C also contains a line for the environmental contract. This contract was not included in the total 14 projects selected. This contract was for environmental reviews completed on each of the lead-based paint projects.

⁷ The statistical sample amount is unit based. The unsupported and ineligible procurement costs determined include the costs on a per project basis and are higher than the sample amount.

We relied in part on computer-processed data contained in the City's systems to achieve our audit objective. Although we did not perform detailed assessments of the reliability of the data, we performed minimal levels of testing and found the data to be adequately reliable for our purposes. The tests for reliability included but were not limited to comparing computer-processed data to invoices, project files, and other supporting documentation.

We conducted the audit in accordance with generally accepted government auditing standards. Those standards require that we plan and perform the audit to obtain sufficient, appropriate evidence to provide a reasonable basis for our findings and conclusions based on our audit objective(s). We believe that the evidence obtained provides a reasonable basis for our findings and conclusions based on our audit objective.

Internal Controls

Internal control is a process adopted by those charged with governance and management, designed to provide reasonable assurance about the achievement of the organization's mission, goals, and objectives with regard to

- Effectiveness and efficiency of operations,
- Reliability of financial reporting, and
- Compliance with applicable laws and regulations.

Internal controls comprise the plans, policies, methods, and procedures used to meet the organization's mission, goals, and objectives. Internal controls include the processes and procedures for planning, organizing, directing, and controlling program operations as well as the systems for measuring, reporting, and monitoring program performance.

Relevant Internal Controls

We determined that the following internal controls were relevant to our audit objective:

- Program operations - Policies and procedures that the management has implemented to reasonably ensure that a program meets its objectives, while considering cost effectiveness and efficiency.
- Relevance and reliability of information - Policies and procedures that management has implemented to reasonably ensure that operational and financial information used for decision making and reporting externally is relevant, reliable, and fairly disclosed in reports.
- Compliance with laws and regulations - Policies and procedures that management has implemented to reasonably ensure that program implementation is consistent with laws and regulations.

We assessed the relevant controls identified above.

A deficiency in internal control exists when the design or operation of a control does not allow management or employees, in the normal course of performing their assigned functions, the reasonable opportunity to prevent, detect, or correct (1) impairments to effectiveness or efficiency of operations, (2) misstatements in financial or performance information, or (3) violations of laws and regulations on a timely basis.

Significant Deficiency

Based on our review, we believe that the following item is a significant deficiency:

- The City did not properly administer its lead-based paint program (see findings 1 and 2).

Appendixes

Appendix A

Schedule of Questioned Costs

Recommendation number	Ineligible 1/	Unsupported 2/
1A	\$151,699	
1B	\$45,740	
1C		\$457,327
1D		\$416,914
2A	<u>\$9,658</u>	_____
Totals	<u>\$207,097</u>	<u>\$874,241</u>

- 1/ Ineligible costs are costs charged to a HUD-financed or HUD-insured program or activity that the auditor believes are not allowable by law; contract; or Federal, State, or local policies or regulations.
- 2/ Unsupported costs are those costs charged to a HUD-financed or HUD-insured program or activity when we cannot determine eligibility at the time of the audit. Unsupported costs require a decision by HUD program officials. This decision, in addition to obtaining supporting documentation, might involve a legal interpretation or clarification of departmental policies and procedures.

Appendix B

Auditee Comments and OIG's Evaluation

Ref to OIG Evaluation

Auditee Comments

Comment 1

COMMUNITY DEVELOPMENT & HOUSING



June 10, 2015

Nikita N. Irons
Regional Inspector General for Audit, 4AGA
U. S. Department of Housing and Urban Development
Office of Audit (Region IV)
75 Spring Street SW., Room 330
Atlanta, GA 30303

RE: Written Response to Draft Audit Report

Dear Ms. Irons:

This letter is in response to the draft audit report dated May 27, 2015 reviewing the City of High Point's lead-based paint hazard control grant requirements for procurement and eligibility operations. Please find below our written comments to findings and statements contained within the report.

Finding 1: The City did not comply with procurement requirements

First Basis – The City entered into an environmental contract in April 2009 for services rendered from April 1 through October 31, 2009. This contract had expired and was not renewed; therefore, as of November 1, 2009, the contract was no longer valid. However, the City continued to pay the contractor under the expired contract through July 31, 2013.

Comment – The City admits that the Agreement between it and Matrix Health & Safety Consultants, L.L.C. was not extended in writing. However, Paragraph C of the Agreement allowed the City to renew it unilaterally on an annual basis through December, 2011, and such extensions were not required by the Agreement itself to be in writing. For all periods between 2009 and 2013, both the City and Matrix performed under the same terms and conditions provided for in the original written Agreement; the City was operating under the assumption that the Agreement was extended by virtue of the past performance of the parties which at all times was consistent with the written terms of the Agreement, and the fact that neither party had given notice to the other that the Agreement had been terminated. A contract extension based on past performance may be enforced under North Carolina law, and we have obtained written confirmation from Matrix that the Agreement was so extended (see Attachment A). Attachment B provides a legal opinion as to the enforceability of the contract extension and the execution of the contract overall.

Second Basis – The City did not select the lowest bidder. The City would determine the cost estimate amount and the 15 percent margin above and below this amount. It would open the bids after it determined the range. For any bids outside the 15 percent range, the City would consider the contractor to be nonresponsive.

City of High Point, P.O. 230, 211 South Hamilton Street, High Point, NC 27261 USA
Office: 336.883.3676 Fax: 336.883.3355 TDD 336.883.8517

Ref to OIG
Evaluation

Auditee Comments

Comment 2

Comment – North Carolina general statutes allow units of government to consider quality as a consideration for bid awards. The +/-15% bid range was used by the City's Community Development and Housing Department (CD&H) to help ensure the quality of the work that a "responsible" bidder would provide.

Comment 3

N.C.G.S. §143.131(a) states "All contracts for construction or repair work or for the purchase of apparatus, supplies, materials, or equipment, involving the expenditure of public money in the amount of thirty thousand dollars (\$30,000) or more, but less than the limits prescribed in G.S. 143-129, made by any officer, department, board, local school administrative unit, or commission of any county, city, town, or other subdivision of this State shall be made after informal bids have been secured. **All such contracts shall be awarded to the lowest responsible, responsive bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract.** It shall be the duty of any officer, department, board, local school administrative unit, or commission entering into such contract to keep a record of all bids submitted, and such record shall not be subject to public inspection until the contract has been awarded." However, due to concerns expressed during the initial site visit from the HUD Lead Office, CD&H discontinued using the +/-15% bid range (see Attachment C - September 5, 2014 correspondence to HUD (Michelle Miller)). In addition, the Department has further revised its procurement process by utilizing the City's Purchasing Department in securing contractors for rehabilitation work as of November 25, 2014 (see Attachment D).

Third Basis – The City did not retain all procurement documentation, such as signed contracts, notices to proceed, requests for bids/documents and cost estimates for change orders as required by the City's work plans.

Comment – The following comments address each documentation concern separately. In each case where specific documentation could not be located or the documents were incomplete (e.g., missing signatures), the City will re-document the file where feasible.

Comment 4

A. Signed contracts – The auditors highlighted two projects where an executed contract was not found in the project file. Upon further review, City staff located one of the executed contracts (519 N. Centennial) and forwarded it to the auditors in an email dated March 13, 2015 (see Attachment E). The executed contract for the other project (521 Ashburn) could not be located. However, all other documents associated with this project are located in the project file.

Comment 5

B. Notices to Proceed – In both grant applications, language was included stating that "[City] staff will notify contractors and owners of successful bids" and "a notice-to-proceed order will be issued" as a part of the bid acceptance process. However, the application does not specify the method or form that would be used in a "notice-to-proceed". The executed contract between the homeowner and the contractor served as a de facto "notice-to-proceed" for all parties involved.

Comment 6

C. Requests for Bid – City staff was able to locate one of the requests for bid (610 Clover) and forwarded it to the auditors in an email dated March 13, 2015 (see Attachment E). The request for bid for 415 Welch could not be located. However, all other documents associated with the completion of the work at 415 Welch are located in the project file.

Comment 7

D. Incomplete Bid Documents - This deficiency primarily consisted of missing signatures; however, bid documents could not be located for one of the projects (1912 Wickham). Please note that all other documents associated with the completion of the work at 1912 Wickham are located in the project file.

**Ref to OIG
Evaluation**

Auditee Comments

Comment 8

E. Cost Estimates for Change Orders – Once it was determined that additional work was needed beyond what was addressed in the original work write-up, the City's project manager negotiated with the contractor to arrive at a reasonable cost estimate. The negotiated amount of the cost estimate is the basis of the change order. The City is evaluating the use of mobile data terminals to enhance its ability to improve cost analysis and documentation of cost estimates onsite. Please see additional information under Fourth Basis below.

Fourth Basis – The City did not prepare cost analyses on change orders.

Comment – Please see item E. under Third Basis above. It should be noted that the change orders in question constituted less than 7% of the total contract value. The City strongly believes that it is unreasonable to invalidate the entire contract based on such a small amount.

Comment 9

Fifth Basis – Although the City had a HUD-approved work plan, the director of the Community Development and Housing Department did not ensure that City staff followed the requirements.

Comments –In response to this basis, the Department shall submit to HUD documentation (1) of internal controls to ensure compliance with HUD procurement regulations and policies & procedures so that only eligible costs are paid and costs are properly supported and (2) stating that staff members are aware of and trained on Department policies and procedures, especially as it relates to HUD procurement regulations on or before a mutually agreed upon date.

The Department has already taken steps to improve internal controls overall, many based on actionable recommendations by The Ferguson Group, the City's HUD Lead Paint grant consultant (see Attachment C). For example, the Department has begun to utilize the City's Purchasing Department to secure contractors (see Second Basis). Also, the Department Director has reformulated a senior-level management position (CD Administrator) to consolidate monitoring and compliance functions within the Department in one position.

Comment 10

Finding 2: The City Used HUD Funds for Ineligible Costs

Comment – The Department acknowledges this finding and will reimburse the U. S. Treasury \$9,658 from non-Federal funds for the 2008 grant payments made from ineligible expenses.

**Ref to OIG
Evaluation**

Auditee Comments

SUMMARY

The City of High Point thanks HUD for the opportunity to remediate more than 300 units of housing for low and moderate income renters and owner-occupants utilizing lead hazard control grant dollars awarded to the City by HUD in 2008 and 2011. The City welcomes the opportunity to improve our policies/ procedures through external program evaluations.

Sincerely,



Michael E. McNair
Director

OIG Evaluation of Auditee Comments

Comment 1 The City stated that the agreement between the City and Matrix Health & Safety L.L.C was not extended in writing, that paragraph C of the agreement allowed the City to renew it unilaterally on an annual basis through December 2011, and such extensions were not required by the agreement to be in writing. The City also stated that for all periods between 2009 and 2013, both the City and Matrix performed under the same terms and conditions provided for in the original written agreement. The City was operating under the assumption that the Agreement was extended by virtue of the past performance of the parties which at all times was consistent with the written terms of the agreement and the fact that neither party had given notice to the other that the agreement had been terminated. A contract extension based on past performance may be enforced under North Carolina law and the City obtained written confirmation from Matrix that the agreement was so extended. The City provided a legal opinion as to the enforceability of the contract extension and the execution of the contract overall.

However, paragraph C of the original 2008 contract states that the agreement is for services rendered beginning April 1, 2009 through October 31, 2009, and the City reserves the right to renew subsequent contracts, on an annual basis in the best interest of the City, through December 2011. The City did not provide any documentation of the contactors performance for renewal or document the renewal of the contract. The contract extension provided by the City is dated June 9, 2015, which is 2 years after the work was completed. The legal opinion states that the agreement itself did not address renewals past December 2011. The City continued to pay the contractor under the expired contract through July 31, 2013, which resulted in more than \$197,000 being expended. The City continued to use Matrix until July 31, 2013.

Comment 2 The City stated North Carolina general statutes allow units of government to consider quality as a consideration for bid awards. The City also stated the +/-15 percent bid range was used by the City's Community Development and Housing Department to help ensure the quality of the work that a "responsible" bidder would provide.

We spoke with a State of North Carolina purchasing Officer and she stated that she was not aware of this common practice and stated the North Carolina General Statute, NC GS 143 Article 8, Public Contracts is the State regulation the City should follow. The statute states, the contract shall be awarded to the lowest responsible, responsive bidder, taking into consideration quality, performance, and the time specified in the bids for the performance of the contract.

Comment 3 The City stated due to concerns expressed during the initial site visit from the HUD Lead Office, it discontinued using the +/- 15 percent bid range. In addition, the Department has further revised its procurement process by utilizing the City's

Purchasing Department in securing contractors for rehabilitation work as of November 25, 2014.

We acknowledge the City's efforts to discontinue using the +/- 15 percent bid range and revising its procurement process. However, as of March 12, 2015, the newly developed standard operating procedures had not been dated, signed, or implemented. Although the City staff had access to the standard operating procedures on the City's share drive, the City had not trained its staff on the new procedures. The City should ensure that the staff is trained on the policies and procedures for HUD procurement regulations so that the staff no longer uses the 15 percent cost estimate margin. The Office of Healthy Homes and Lead Hazard Control will be responsible for reviewing the staff training on the policies and procedures.

Comment 4 The City stated that it located one of the executed contracts (519 N. Centennial) and forwarded it to the auditors in an email dated March 13, 2015. The executed contract for the other project (521 Ashburn) could not be located. However, all other documents associated with this project are located in the project file.

We obtained the executed contract for 519 N. Centennial; therefore, we revised appendix C. The City agreed that the executed contract for 521 Ashburn could not be located. However, we disagree with the statement that the file contained all other documentation as noted in appendix C.

Comment 5 The City stated that in both grant applications, language was included stating that the City staff will notify contractors and owners of successful bids and a notice-to-proceed will be issued as a part of the bid acceptance process. However, the application does not specify the method or form that would be used in a "notice-to-proceed." The executed contract between the homeowner and the contractor served as a de facto "notice-to-proceed" for all parties involved.

As the City stated in both grant applications, language was included stating that the City staff will notify contractors and owners of successful bids and a notice-to-proceed will be issued as a part of the bid acceptance process. In addition, the City's 2008 and 2011 work plans stated that the contractor and owner must sign the lead hazard control work agreement and then a notice-to-proceed will be issued. The contract and notice-to-proceed are two separate documents that are required to be executed.

Comment 6 The City stated that its staff was able to locate one of the requests for bid (610 Clover) and forwarded it to the auditors in an email dated March 13, 2015. The request for bid for 415 Welch could not be located. However, all other documents associated with the completion of the work at 415 Welch are located in the project file.

We obtained the requests for bids for 610 Clover; therefore, we revised appendix C. The City agreed that the request for bid for 415 Welch could not be located. However, we disagree with the statement that the file contained all other documentation as noted in appendix C.

Comment 7 The City stated that the deficiency primarily consisted of missing signatures; however, bid documents could not be located for one of the projects (1912 Wickham). All other documents associated with the completion of the work at 1912 Wickham are located in the project file.

The City agrees that the bid documents could not be located for 1912 Wickham. However, we disagree with the statement that the file contained all other documentation as noted in appendix C.

Comment 8 The City stated that the change orders in question constituted less than 7 percent of the total contract value. It strongly believes that it is unreasonable to invalidate the entire contract based on such a small amount.

The City was required by 24 CFR 85.35(f)1 to provide documentation of cost estimates for change orders. The City was not able to provide any documentation of change orders for six contracts. We disagree with the statement that it is unreasonable to invalidate the entire contract based on such a small amount. The six contracts in question had at least one additional deficiency, associated with the contract as noted in appendix C.

Comment 9 We acknowledge the City's steps to submit HUD documentation (1) of internal controls to ensure compliance with HUD procurement regulations and policies & procedures so that only eligible costs are paid and costs are properly supported and (2) stating the staff members are aware of and trained on Department policies and procedures, especially as it related to HUD procurement regulations on or before a mutually agreed upon date. The City stated is has already taken steps to improve internal controls overall. The Office of Healthy Homes and Lead Hazard Control will be responsible for reviewing verifying whether the actions for recommendations 1E and 1F are addressed sufficiently.

Comment 10 We acknowledge the City's comment to reimburse the U.S. Treasury \$9,658 from non-Federal funds for the 2008 grant payments made from ineligible expenses. The Office of Healthy Homes and Lead Hazard Control will be responsible for verifying whether the actions for recommendations 2A and 2B are addressed sufficiently.

Appendix C

Procurement Deficiencies									
Project name	Unsupported amount	Ineligible amount	Lack of notice to proceed	Incomplete bid documents	No cost estimate for change order	Lowest bidder not chosen	Lack of request for bids	Lack of executed contract	Expired contract
Lexington Apartments	\$408,364		X		X	X			
Oakwood Apartment (4 files reviewed)	\$345,330		X	X	X	X			
519 North Centennial	\$30,950		X			X			
201 Edgeworth	\$23,575		X	X	X	X			
1115 Anderson	\$23,300		X	X					
1805 Arden	\$16,515		X			X			
415 Welch	\$13,307		X				X		
521 Ashburn	\$8,550		X	X				X	
610 Clover	\$3,695		X	X	X				
1005 Barbee	\$2,225		X		X				
1912 Wickham	\$750		X	X	X				
Environmental contract ⁸		\$197,439	X						X
Total	\$876,561	\$197,439	12	6	6	5	1	1	1

⁸ This contractor performed the lead testing for all the projects reviewed.